

These are the tentative rulings for civil law and motion matters set for Tuesday, June 17, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 16, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. Telephone appearances through June 2014 will continue to be governed by the current Local Rules. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. S-CV-0029163 Becharoff Capital Corp. vs. Ferber, Edward R.**

Plaintiff's request for judicial notice is granted.

Plaintiff's motion for order assigning rents due and/or that will become due to judgment debtor Edward Ferber from rental of real property is granted.

Any and all rents due to judgment debtor Edward R. Ferber arising from real property legally described as "Lot 71, as shown on the Plat of Meadowbrook, a Planned Unit Development, filed for record September 19, 2000, in Book W of Maps, at Page 63, records of Placer County" are hereby assigned to plaintiff until such time as the judgment in this action is paid in full.

**2. S-CV-0030637 Agutos, Florencio, et al vs. Centex Homes**

The motion for judgment on the pleadings is continued to July 1, 2014 at 8:30 a.m. in Department 40.

**3. S-CV-0030889 Innocent, Lyle, et al vs. Wells Fargo Bank, N.A., et al**

The motion for entry of judgment is dropped. No moving papers were filed.

**4. S-CV-0032115 Parks, Phyllis A. vs. Roseville Senior Living Proper, et al**

Plaintiff's motion for order to set aside dismissal is granted. The dismissal entered on February 11, 2014 is hereby set aside. An OSC re dismissal is set for July 22, 2014 at 11:30 a.m. in Department 40.

**5. S-CV-0032437 Tiskiy, Nadezhda, et al vs. Teuscher, Wade, et al**

Ruling on Objections

Defendants' objections to evidence are ruled on as follows: Objection Nos. 1, 2, 4, 5, 6, 7, 8, 9 and 10 are sustained. Objection No. 3 is overruled.

Ruling on Motion for Summary Judgment

Defendants' motion for summary judgment is granted.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). Defendants moving for summary judgment bear the burden of persuasion that one or more elements of the causes of action in question cannot be established, or that there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Defendants assert that they are entitled to judgment as a matter of law because plaintiffs failed to comply with the claims presentation requirements of Government Code section 915 prior to filing this action. (Deft. SSUMF 1-22.) Defendants note that on October 10, 2012, plaintiffs' counsel faxed a claim form on behalf of plaintiff Nadezhda Tiskiy (but not plaintiff Ruslan Yanovskiy) to the senior claims adjuster with the claims administrator for the County of Modoc, and were sent a response by facsimile indicating that the claim form must be filed with the Modoc County Clerk of the Board of Supervisors at the address that was listed on the claim form itself. (Deft. SSUMF 12-14.) These facts are undisputed.

In opposition, plaintiff claims, through the declaration of counsel, that the required claim was filed, and that filing extensions were granted to defendants in exchange for a waiver of any deficiencies in filing the claim. Counsel provides no foundational facts to support such assertions. Although he states that the agreements were made "in writing, verbally and before the Court on record", the only evidence submitted in support of this statement are letters between counsel which mention no such agreement. In opposition to defendants' separate statement, plaintiffs assert that they "have evidence of presentment of the claim and waiver of any procedural deficiencies both on the Court record in this case and according to the written documentation provided by Scherer." However, the only evidence presented are unfounded statements in the declaration of counsel's declaration.

Failure to comply with the claims statement bars the claim against the public entity. *State of Cal. v. Superior Court* (2004) 32 Cal.4th 1234, 1239; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983. If action against the public entity is barred by failure to file a timely claim, suit against a public employee for causing injury in the scope of his or her employment is also barred. Gov. Code § 950.2. Plaintiffs fail to demonstrate a triable issue of disputed material fact regarding compliance with the claims presentation requirement. Accordingly, defendants are entitled to judgment as a matter of law.

**6. S-CV-0032588 U.S. Bank, N.A. vs. Alizadeh, Abolghassem, et al**

Plaintiff's motion for sanctions against defendants Mike Alizadeh and Paul Warner is granted. Pursuant to Code of Civil Procedure section 708.170(a)(2), if a person's failure to appear at a judgment debtor's examination is without good cause, the judgment creditor shall be awarded reasonable attorneys' fees incurred in the examination proceeding. Defendants fail to establish that their failure to appear at the duly noticed examinations on May 19, 2014 was with good cause.

Plaintiff is awarded attorneys' fees of \$3,408 from defendants Mike Alizadeh and Paul Warner, jointly and severally. This amount constitutes the reasonable attorneys' fees incurred in attending the examination proceeding. Plaintiff's request for other fees and costs is denied, as the statute expressly provides only for an award of attorneys' fees incurred in the examination proceeding.

**7. S-CV-0032865 Acocks, Michael, et al vs. Ford Motor Company**

The motion for summary judgment is continued to June 24, 2014 at 8:30 a.m. in Department 40. The court finds good cause to permit the motion to be heard within 30 days of the scheduled trial date.

**8. S-CV-0033167 Green, Paul Deshaun - In Re the Petition of**

Petitioner Paul Green's petition for writ of mandate is denied.

Petitioner argues that mandatory sex offender registration based on a violation of Penal Code section 288(a) violates equal protection, citing *People v. Hofsheier* (2006) 37 Cal.4th 1185 and *People v. Picklesimer* (2010) 48 Cal.4th 330. Neither *Hofsheier* nor *Picklesimer* dealt with the particular violation at issue in this case. However, other California appellate decisions have dealt with individuals convicted of Penal Code 288(a) and found that mandatory sex offender registration does not violate equal protection because such a defendant is not similarly situated with another group of convicted persons who receive different treatment. See *People v. Tuck* (2012) 204 Cal.App.4th 724; *People v. Singh* (2011) 198 Cal.App.4th 364.

As noted in *Tuck*, there is no sexual offense involving only minors under the age of 14 for which conviction does not require mandatory registration. Thus, subjecting a person convicted of violating Penal Code section 288(a) to mandatory registration does not deny that person equal protection. *People v. Tuck, supra*, 204 Cal.App.4th at 738.

Based on the foregoing, petitioner's petition for writ of mandate is denied.

**9. S-CV-0033734 Douglas, Toby vs. Brune, Mark, et al**

Rulings on Request for Judicial Notice and Objections to Evidence

Defendant Mark Brune, as Trustee of the Brune Family Trust's ("Brune's") request for judicial notice is granted. Plaintiff Toby Douglas, Director of the Department of Health Care Services' ("the Department's") objection No. 1 is overruled, and objection Nos. 2 and 3 are sustained.

Ruling on Motion for Summary Judgment

Brune's motion for summary judgment is denied.

"When the Legislature mandates notice to an agency, the statute of limitations will not begin to run until notice is provided." *Shewry v. Begil* (2005) 128 Cal.App.4th 639, 645. Probate Code section 215 "constitutes a bright line for the commencement of the running of the statute of limitations." *Id.* Brune presents no evidence to establish that notice as required by Probate Code section 215 was provided more than three years prior to the filing of the complaint. Accordingly, summary judgment may not be granted on statute of limitations grounds.

Brune alternatively argues that the Department is precluded from seeking enforcement of claims because his sister is permanently disabled. However, Brune provides no competent evidence to support the conclusion that his sister was permanently disabled at the time of the Department's notice of claim. Brune's statement to this effect lacks foundation. Accordingly, summary judgment may not be granted on this alternative ground.

**10. S-CV-0034068 Walsh, Liliya, et al vs. Federal Nat'l Mortgage Ass'n., et al**

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on June 17, 2014 at 8:30 a.m. in Department 32.

Plaintiffs' request for judicial notice is denied as to Exhibit A. Discovery responses do not constitute documents of which the court may take judicial notice under Evidence Code sections 451 or 452. Plaintiffs' request for judicial notice is granted as to Exhibit B.

Plaintiffs' motion for reconsideration is denied.

Motions for reconsideration are restricted to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. A motion for reconsideration must be accompanied by an affidavit by the moving party stating what application was previously made, when and to what judge the application was made, what order was made, what new or different facts, circumstances or law are claimed to be shown, and a satisfactory

explanation for the failure to present the information at the first hearing. Code Civ. Proc. § 1008(a); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690. In this case, plaintiff states only that “[w]e did not have possession or knowledge of this evidence until recently.” There is no showing that plaintiffs could not, with reasonable diligence, have discovered or produced this information earlier. On this basis alone, the motion must be denied.

However, even if the court considered plaintiffs’ “new” facts, the same result would obtain. Plaintiffs’ declaration establishes at most that Max Default Services Corporation failed to produce a requested document in discovery. This does not, by itself, establish that the requested document does not exist. Plaintiff also fails to cite to any authority to support the contention that the absence of such a declaration would void the notice of default. Nor does plaintiffs’ application address any other of the numerous grounds upon which the prior motion was denied.

For each of the foregoing reasons, plaintiffs’ motion is denied.

**11. S-CV-0034585 Samaan, Nabil, et al vs. Anderson, Lawrence**

Ruling on Demurrer to Complaint

Defendant’s unopposed demurrer to complaint is sustained with leave to amend.

The demurrer is sustained as to plaintiffs’ second cause of action for general negligence, as this cause of action appears duplicative of plaintiffs’ first cause of action (motor vehicle). *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1401. This cause of action also fails to adequately allege negligent infliction of emotional distress. *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072.

The demurrer is sustained as to plaintiffs’ third cause of action for intentional infliction of emotional distress, as plaintiffs fail to adequately allege facts establishing plaintiffs’ severe or extreme emotional distress. *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.

The demurrer is sustained as to plaintiffs’ fourth cause of action for assault, as plaintiffs fail to allege requisite intent.

Ruling on Motion to Strike

Defendant’s motion to strike punitive damages is granted with leave to amend. In light of the ruling on the demurrer, the only cause of action which is adequately pled is plaintiff’s first cause of action for negligence. The sole remaining cause of action for negligence is insufficient to support a prayer for punitive damages.

Leave to Amend

Plaintiffs shall file and serve their first amended complaint by no later than July 11, 2014.

**12. S-CV-0034592 Bianchini, John, et al vs. Arnold, Natalie V., et al**

Request for Judicial Notice

The requests for judicial notice submitted in connection with the moving and opposition papers are granted. Plaintiffs' request for judicial notice in support of their reply brief is denied, as the matters of which the court is asked to take judicial notice are not sufficiently relevant.

Ruling on OSC re Preliminary Injunction

Plaintiffs' request for a preliminary injunction is denied.

The court may grant a preliminary injunction where it appears from the complaint or affidavits in support that the moving party is entitled to the demanded relief and the moving party would suffer irreparable injury if the enjoined action were allowed to proceed. Code Civ. Proc. § 526(a). In considering the hardships upon the parties, the moving party has the burden of showing that he or she would be harmed if the preliminary injunction were not granted. *Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.

In this case, plaintiffs fail to demonstrate irreparable injury if the proposed injunction is not granted. Plaintiff John Bianchini notes that a restraining order has been granted against him, and he fears that he could be in violation of such a restraining order simply by being present on his own property. On its own motion, the court takes judicial notice of the matter of *Goodwin v. Bianchini*, Placer County Superior Court Case No. SCV-34462. In that case a restraining order was granted against John Bianchini which includes a 10-yard stay-away order. Plaintiffs provide no evidence to establish a likelihood that the 10-yard stay-away order could be inadvertently violated simply by Mr. Bianchini's presence on his own property. Plaintiffs otherwise demonstrate no harm by defendants' continued use of the subject road pending resolution of this action.

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